will, and trade marks, and providing for a sale of the same by a receiver for the joint benefit of D. and the plaintiff. *Barclay* v. *Barclay*, 155 N. Y. Supp. 221.

Ordinarily the name, good will, and trade marks of a partnership are firm assets, which each partner, upon dissolution, is entitled to have converted into cash and included in the firm accounts. *Slater* v. *Slater*, 175 N. Y. 143, 67 N. E. 224; *Moore* v. *Rawson*, 185 Mass. 264, 70 N. E. 64; *Hill* v. *Fearis*, [1905] 1 Ch. 466. Of course this rule may be changed by agreement of the parties. And in many jurisdictions it is held that in the absence of an express agreement to the contrary, each partner, upon dissolution, has an equal right to use the firm name, if he does not thereby expose his former partners to risk of liability. *Burchell* v. *Wilde*, [1900] 1 Ch. 551; *Young* v. *Jones*, 30 Fed. Cas., No. 18,159. It is recognized, therefore, that such property is, in its nature, susceptible of separate and independent use by each of two coöwners. *Merry* v. *Hoopes*, 111 N. Y. 415, 18 N. E. 714. But where the retiring partner retains his interest in the name, giving the other partner merely the right to use it in return for a share of the profits, it is submitted that there is an implied agreement that, so long as the business continues, the retiring partner's interest will be used for his benefit. Such an agreement is specifically enforceable, for the subject-matter is unique and a fiduciary relation is involved. Moreover, since the value of a firm name or a trade mark lies in its connection with the business with which it has been used, it cannot be assigned apart from that business. *Thorneloe* v. *Hill*, [1894] 1 Ch. 569. Therefore, as long as D. continued the business of B. & Co., the plaintiff's interest was not restored to her, and she was entitled to compensation.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — EXEMPTION OF RAILROADS FROM LIABILITY FOR NEGLIGENT INJURIES TO PULLMAN EMPLOYEES. — A waiter in a Pullman car was killed by the negligence of a railroad. His contract with the Pullman Company contained a provision releasing the railroads from liability for negligent injuries. Suit is brought by his widow under the Colorado Death Statute. *Held*, that his widow may not recover. *Lindsay* v. *Chicago, B. & Q. R. Co.*, 226 Fed. 23 (C. C. A., 7th Circ.).

For a discussion of this case, see NOTES, p. 435.

INSURANCE — ELECTION AND WAIVER OF CONDITIONS — EFFECT OF FAILURE OF INSURER TO RETURN PREMIUMS ON BREACH OF CONDITION. — The plaintiff, supposing that a house belonged to him, insured it with the defendant company. The policy provided that it should be void if the insured did not own the property in fee, and also provided that if the policy should become void, the premiums should be returned. After a loss, the defendant learned of a defect in the plaintiff's title, but did not return the premium. *Held*, that the neglect to return the premium was a waiver of the breach of condition, and the defendant was therefore liable. *Scott* v. *Liverpool & London & Globe Ins.* 86 S. E. 484 (S. C.).

It is generally recognized that a provision in an insurance policy that under a certain condition it shall be void means only that the insurer will then have the privilege of avoiding the policy. See 2 MAY, INSURANCE, § 497. Nevertheless it has been uniformly held that the insured cannot recover without proving that the insurer by some affirmative action has waived the breach of condition. *Ins. Co.* v. *Wolff*, 95 U. S. 326. See *Titus* v. *Glens Falls Ins. Co.*, 81 N. Y. 410, 419. Recent authorities have, however, been very liberal in finding such a waiver. *Titus* v. *Glens Falls Ins. Co., supra; Replogle* v. *American Ins. Co.*, 132 Ind. 360, 31 N. E. 947. See *Ins. Co.* v. *Eggleston*, 96 U. S. 572, 577. The principal case can only be supported on the theory that the insurer has merely an election to avoid the policy, which can only be taken advantage of by promptly displaying an intent to do so. See *Provincial Ins. Co.* v. *Leduc*,

6 P. C. 224, 243. This theory, which removes from the insured the burden of proving a waiver, has been ably supported. See J. S. Ewart, "Waiver in Insurance Cases," 18 HARV. L. REV. 364. Its application to a case where the breach of condition occurred, or was first known to the insurer, after the loss, and where there was no possible prejudice to the plaintiff in the defendant's failure to act, is not only novel but against authority. *Ætna Ins. Co.* v. *Mount*, 90 Miss. 642, 44 So. 162; *Goorberg* v. *Western Assurance Co.*, 150 Cal. 510, 89 Pac. 130.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — FEDERAL EMPLOYERS' LIABILITY ACTS — WHETHER STATE COMPENSATION STATUTES ARE SUPERSEDED BY ACT OF 1908. — The plaintiff, a railroad employee, was injured while tamping ties on a roadbed used in interstate commerce. It was agreed that no one was negligent. He sued for recovery under the Workmen's Compensation Law of New York. *Held*, that he may recover. *Winfield* v. *New York Central & Hudson R. R. Co.*, 54 N. Y. L. J. 52, 110 N. E. 614 (N. Y. Ct. of Appeal).

For a discussion of the question whether the federal Employers' Liability Act has superseded the state compensation laws as to interstate commerce, see NOTES, p. 439.

JUDGES — GROUNDS OF DISQUALIFICATION — PREJUDICE. — Burke, one of the miners who took part in the recent Colorado coal strike, was indicted for a murder alleged to have been committed in the course of the riots resulting from the strike. He filed affidavits alleging that the trial judge had been employed as counsel by the mine owners in similar prosecutions against other strikers, and that he was a vigorous partisan of the owners and had openly declared himself hostile to the strikers and their cause, and demanding that another judge be called in to take his place at the trial. The judge held that the facts stated were not sufficient to satisfy the statutory requirement for disqualification. The affiant then applied to the Supreme Court for a writ of prohibition. *Held*, that the writ will issue. *People* v. *Hillyer*, 152 Pac. 149 (Colo. Sup. Ct.).

For a discussion of the questions involved, see NOTES, p. 430.

LANDLORD AND TENANT — ASSIGNMENT OF LEASE — ASSIGNEE'S LIABILITY FOR RENT. — The plaintiff leased premises to a tenant who convenanted not to assign without his permission. The tenant became bankrupt and the lease was assigned to the defendant who later promised the plaintiff to pay the rent in return for the latter's assent to the assignment. The defendant assigned to a third party. The plaintiff sued the defendant for rent accruing after this second assignment. *Held*, that the defendant is not liable. *78th Street & Broadway Co.* v. *Pursell Mfg. Co.*, 155 N. Y. Supp. 259 (Sup. Ct.).

The assignee of a lease ordinarily terminates his liability to the lessor for rent when he makes an assignment over, since this puts an end to the privity of estate between the two. *Consolidated Coal Co.* v. *Peers*, 166 Ill. 361, 46 N. E. 1105; *Johnson* v. *Sherman*, 15 Cal. 287; *Fagg* v. *Dobie*, 3 Y. & C. 96. See 2 TAYLOR, LANDLORD AND TENANT, 9 ed., § 452; WOODFALLS, LANDLORD AND TENANT, 19 ed., 302. However, the liability of the assignee will continue in case the lessor can base his claim against him for rent upon privity of contract. *Springer* v. *De Wolf*, 194 Ill. 218, 62 N. E. 542; *Lindsley* v. *Schnaider Brewing Co.*, 59 Mo. App. 271. See JONES, LANDLORD AND TENANT, § 462. But, of course, the lessor must show that the alleged contract was supported by proper consideration. *Dougherty* v. *Matthews*, 35 Mo. 520. In the principal case the only consideration which can be found to support the promise of the assignee to pay the rent is the lessor's assent to the assignment. And it is now well settled that an assignment of a lease made by the trustee of a bankrupt lessee